HENRI GUZEK

IBLA 70-332 Decided March 10, 1972

Appeal from decision (Oregon 018590) by Portland, Oregon, land office, Bureau of Land Management, declaring mining claims to be null and void ab initio.

Affirmed.

Mining Claims: Lands Subject to--Public Lands: Classification--Recreation and Public Purposes Act

A classification of land for disposition under the Recreation and Public Purposes Act segregates the land from mineral location until it is vacated; mining claims located while the land is so segregated are properly declared null and void ab initio.

APPEARANCES: Brown, Smith & Robinson, attorneys for appellant.

OPINION BY MRS. THOMPSON

This appeal by Henri Guzek is from a decision of the Portland, Oregon, land office, Bureau of Land Management 1/ , dated November 22, 1968, which declared his six mining claims, Rainbow's End 1 through 6 (Oregon 018590), to be null and void as the lands were segregated from all appropriations by a classification for recreation and public purposes at the time the claims were located.

1/ The appeal was directed to the Director, Bureau of Land Management. Effective July 1, 1970, the Secretary of the Interior, in the exercise of his supervisory authority, transferred jurisdiction over all appeals pending before the Director, Bureau of Land Management, to the Board of Land Appeals. Circular 2273, 35 F.R. 10009, 10012. Action on this appeal was suspended pending litigation which resulted in the decision by the United States Court of Appeals, for the Ninth Circuit, Buch v. Morton, 449 F.2d 600 (1971), which will be discussed infra.

The mining claims are situated in lots 1 and 2, S 1/2 NE 1/4 and NE 1/4 SE 1/4 sec. 1, T. 34 S., R. 5 W., W.M., Oregon, and were located March 13, 1966. Prior to the location of the claims, the lands were classified under the Recreation and Public Purposes Act, 43 U.S.C. § 869 (1970).

Appellant does not dispute the fact of the classification of the lands but does dispute the effect of the classification upon the claims. He asserts that the land office decision is erroneous for the following stated reasons:

1. The classification was not published in the Federal Register as required by the Administrative Procedure Act.

2. No public notice was given of the classification.

3. More than 18 months had passed subsequent to the attempted classification and no application had been made by any of the agencies authorized to do so under the Statute before Mr. Guzek located his claims.

4. 43 U.S.C. Sec. 315f provides that locations and entries under mining laws may be made on withdrawn lands without regard to classification and without restriction or limitation of the above Chapter.

5. There is no basis in law for the decision.

The records in this case show the classification by Bureau motion was filed in the land office on June 19, 1963. This is reflected on the serial register page for the classification, Oregon 013596. This is also reflected on the tract book at that time and then transferred to the historical index of the new record system for T. 34 S., R. 5 W., W.M., Oregon. The same records show the classification action was vacated on May 16, 1968.

Despite appellant's contentions, there was public notice of the classification action by virtue of the notation on the land office records. In a Departmental decision, R. C. Buch, 75 I.D. 140 (1968), it was held that there was no requirement under the Recreation and Public Purposes Act and the regulations thereunder, 43 CFR 2232.1-4 (1968), now 43 CFR 2741.2(d) (1972), or under other law that the classifications be published in the Federal Register in order to segregate the land from all appropriations, including locations

under the mining laws. This Departmental decision has now been affirmed by the United States Court of Appeals for the Ninth Circuit in Buch v. Morton, supra, n. 1.

The Departmental decision and that of the Circuit Court of Appeals in the Buch case also establish that appellant's other contentions are without merit. With respect to his third contention, the Buch decisions hold that so long as the classification under the Recreation and Public Purposes Act stands and is not vacated by specific action by this Department it continues to segregate the land. Even though the Act and the regulations (43 CFR 2741.2(c) (1972)) provide that a classification will be vacated if no application is filed within 18 months, they are not self-executing. Therefore, although appellant's claims were located more than 18 months after the lands were classified, the classification was then still effective to segregate the lands.

With respect to appellant's fourth contention, his citation to section 7 of the Taylor Grazing Act, does not compel any contrary result here. The Buch decisions, supra, indicate that the segregative effect of this classification so as to preclude mining locations is by virtue of the authority of the Recreation and Public Purposes Act and regulations thereunder which govern, rather than the statement in section 7 of the Taylor Grazing Act regarding mining locations. See also Raymond P. Heon, 76 I.D. 290 (1969), holding that a classification under the Taylor Grazing Act that land is suitable for disposal under the Recreation and Public Purposes Act precludes the appropriation of the land under any other public land law, including the mining law.

Because appellant's mining claims were located at a time when the lands were segregated from appropriation under the mining laws, they were void ab initio. There is no merit to appellant's fifth contention that there is no basis in law for the decision; the foregoing discussion establishes the claims were properly declared null and void ab initio for the reason given.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081), the decision appealed from is affirmed.

Joan B. Thompson, Member

We concur:

Martin Ritvo, Member

Joseph W. Goss, Member